



Office of the Attorney General
State of Texas

March 24, 1992

DAN MORALES

ATTORNEY GENERAL

Ninfa G. Odgee
County Auditor, Brooks County
P. O. Box 517
Falfurrias, Texas 78355

OR92-115

Dear Ms. Odgee:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 14695.

You explain that your office has received an open records request for:

a Copy of the Seizure Account (itemized) as related to all seizures money since its inception (under the present administration - to wit; the Brooks County Sheriffs' Dept.) to present time, updated (To include but not limited to Bank Statements and returned Canceled Checks) [sic].

You state that your office does not maintain copies of cancelled checks that have drawn funds from the seizure account. You have, however, submitted to this office for review copies of the original checks that were written on the seizure account, accompanied by the corresponding invoice or employees' time sheets.¹ Although you have raised none of the exceptions listed in section 3(a) of the Open Records Act with regard to these documents, you express concern about violating the privacy rights of law enforcement officers by releasing their time sheets. You

¹Although you state in your letter to us that the employees' time sheets and accompanying documentation for checks written on the account do not come within the ambit of the open records request, the requestor of the records has notified this office in a telephone conversation that he does in fact consider these documents to be encompassed by his request. This seems to be a reasonable interpretation of the request, which seeks information concerning the seizure account including "but not limited to" bank statements and returned canceled checks.

also state that releasing an explanation of the duties performed by the officers could jeopardize criminal investigations.

Section 3(a)(2) protects "information in personnel files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy" The test for section 3(a)(2) protection is the same as that for information protected by common-law privacy under section 3(a)(1): to be protected from required disclosure the information must contain highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person *and* the information must be of no legitimate concern to the public. *Hubert v. Harte-Hanks Texas Newspapers, Inc.*, 652 S.W.2d 546 (Tex. App.-Austin, 1983, writ ref'd n.r.e.). The salary and time sheet information contained in the documents at issue do not meet the tests for common-law privacy. *See generally* Open Records Decision No. 600 (1992) at 9 - 12; *see also* Open Records Decision No. 518 (1989) at 3 - 4; Open Records Decision No. 421 (1984) at 5 (identities of employees authorized to work overtime not protected by privacy) (copies enclosed).

We infer from your concerns that the release of some of requested information might jeopardize criminal investigations and that you intended to raise section 3(a)(8), which excepts from required public disclosure:

records of law enforcement agencies and prosecutors that deal with the detection, investigation, and prosecution of crime and the internal records and notations of such law enforcement agencies and prosecutors which are maintained for internal use in matters relating to law enforcement and prosecution.

Whether this exception applies to particular records depends on whether their release would "unduly interfere" with law enforcement or prosecution. Open Records Decision Nos. 434 (1986); 287 (1981). One of the purposes of the exception is to protect law enforcement and crime prevention efforts by preventing suspects and criminals from using records in evading detection and capture. *See* Open Records Decision No. 133 (1976).

Whether disclosure of particular records will unduly interfere with crime prevention must be decided on a case-by-case basis. Attorney General Opinion MW-381 (1981). Although most information revealing details of particular pending criminal investigations may be withheld pursuant to section 3(a)(8), the applicability of this section is greatly restricted when an investigative file has been closed.

Compare Open Records Decision No. 127 (1976) *with* Open Records Decision No. 252 (1980) (copies enclosed).

You have not demonstrated, nor is it apparent to this office, how the release of the information at issue here would in any way jeopardize ongoing law enforcement efforts. If a governmental body does not claim an exception or fails to show how it applies to the records, it will ordinarily waive the exception unless the information is deemed confidential by the act. *See* Attorney General Opinion JM-672 (1987). Because none of the information in question is deemed confidential by law, we find that you have not met your burden of proof that the information should be withheld. Accordingly, unless you provide this office, within ten days of the date of this letter, an explanation as to how the release of specific portions of the requested information would unduly interfere with the county's law enforcement efforts, you must release this information in its entirety.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-115.

Yours very truly,



Celeste A. Baker
Assistant Attorney General
Opinion Committee

CAB/RWP/nhb

Ref.: ID# 14695
ID# 14976

Enclosures: Open Records Decision Nos. 600, 518, 434, 421, 252, 127
Submitted documents

cc: Mr. Baldemar Soliz
The Honorable David T. Garcia
Mr. Ramiro Castellano
(w/o enclosures)